IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

RP.No. 59 of 2007()

{IN WA.1101/2003 OF THIS COURT}
.....

REVIEW PETITIONER/APPELLANT:

M.PRAKASAN, S/O. MADHAVA BHATTATHIRIPAD,
MADHAVA VILASAM, P.O.PATTOOR,
ALAPPUZHA DISTRICT.

BY ADV. SRI.P.VIJAYAKUMAR

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE, TRIVANDRUM.

2. DISTRICT COLLECTOR, ALAPPUZHA.

3. TAHSILDAR, MAVELIKARA TALUK, MAVELIKARA, ALAPPUZHA.

4. DEPUTY TAHSILDAR (R.R.), MAVELIKARA, ALAPPUZHA.

5. VILLAGE OFFICER, NOORANADU, ALAPPUZHA.

6. THE ADDITIONAL SALES TAX OFFICER, IVTH CIRCLE, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER SRI.V.V.ASOKAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

R.P.NO.59 of 2007
in W.A.No.1101 of 2003

Dated this the 29th day of May, 2007

O R D E R

K.T. SANKARAN, J.

This review petition is filed seeking to review the judgment dated 25th September, 2006 in W.A.No.1101/03.

2. The writ petition was filed by the review petitioner challenging the revenue recovery proceedings initiated against him for realisation of sales tax arrears due in respect of Industrial Accumulators Ltd., which according to the petitioner, is a public limited company. The reliefs prayed for in the writ petition are the following:

> "(i) Call for the records leading upto Ext.P1 and quash the same by a writ of certiorari.
>
> (ii) Declare that petitioner is not defaulter in respect of any Sales Tax arrears owed by the public limited company M/s.Industrial Accumulators Ltd.
>
> (iii) Declare that assets of the petitioner shall not be proceeded against for the recovery of revenue arrears due from the public limited company other than to the extent of his share holding in the company.
>
> (iv) Grant such other proper and further reliefs that may be necessary in the interests of justice including the costs of this O.P."

The learned single Judge dismissed the writ petition by judgment dated 8.11.2001. A review petition was filed by the petitioner herein. But that review petition was also dismissed by the learned single Judge by order dated 10.9.2002.

3. The petitioner filed W.A.No.1101/03. The writ appeal was dismissed holding that there was no pleading in the writ petition that the petitioner is not a Director of the Company.

4. The contention of the petitioner in the review petition is that he was only a promoter and a shareholder holding 10 equity shares in the assessee public limited company. The specific case of the petitioner is that he is not a director of the company and he has specifically pleaded the same in the writ petition, reply affidavit and the Memorandum of Writ Appeal. The documents produced in the case would conclusively establish that the petitioner is only a promoter and the company is a public limited company. If so, Section 26(C) of the Kerala General Sales Tax Act, evidently, would not apply. If Section 26(C) of the Act does not apply, the revenue recovery proceedings initiated against the petitioner would not be maintainable.

5. Sri.V.V.Asokan, learned Government Pleader, fairly submitted that the Company is a public limited company. In view of the submission, the petitioner is entitled to the reliefs prayed for in the writ petition.

The review petition is allowed and the judgment sought to be reviewed is set aside. The writ appeal is allowed and the writ petition is also allowed. All the revenue recovery proceedings initiated against the petitioner in respect of the Sales Tax arrears due from the Company in question shall stand quashed. Liberty is reserved to the Revenue to proceed against the assets of the Company.

Sd/-
H.L. DATTU,
CHIEF JUSTICE.

Sd/-
K.T. SANKARAN,
JUDGE.

Sk/

//true copy//

P.S. To Judge